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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-194896

DATE: December 11, 1979

MATTER OF: Herbert T. Fenton [Retroactive Promotion
and Backpay]

DIGEST: Employee who states he was detailed to higher grade position is not entitled to retroactive temporary promotion to higher grade and backpay. There is conflict of evidence as to whether he was detailed to higher grade position. If he was not detailed he is not entitled to backpay since his position was not reclassified upward. If he was detailed, he would not be entitled to temporary promotion because he did not meet civil service qualification standards (experience requirements) for position.

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This decision responds to the request of Herbert T. Fenton for reconsideration of his claim for a retroactive temporary promotion with backpay denied by our Claims Division in its Settlement Certificate No. Z-2639580, April 12, 1979.

On March 12, 1972, Mr. Fenton, employed as an Appraiser, GS-9, step 3, in the Detroit Area Office, Department of Housing and Urban Development (HUD) was detailed to "unclassified duties" to assist in the implementation of cost procedures in the Cost Evaluation Section of the same office. Although Mr. Fenton's temporary detail specified that it was not to exceed 120 days, he continued to serve under that assignment until July 8, 1973, when he was reassigned from his position as Appraiser, GS-9, step 4, to Construction Analyst, GS-9, step 4, in the same section in which he was serving his detail. Mr. Fenton was later promoted to grade GS-11 on November 25, 1973. It should be noted that an extension of time for this detail beyond 120 days required by subchapter 8-4f, chapter 300 of the Federal Personnel Manual (FPM), was not requested.

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Mr. Fenton's claim was denied by HUD because the detail was to "unclassified duties" and Mr. Fenton did not meet the qualification requirements for a temporary promotion to Construction Analyst, GS-11, under Federal Personnel Manual, Chapter 338, Qualification Requirements, and United States Civil Service Commission Handbook X-118 Qualification Standards for Construction Analyst, GS-828-11. Further, it was felt that a promotion would violate merit staffing policies in that

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selection was made without competitive considerations. HUD has recognized that Mr. Fenton should not have been detailed to "unclassified duties" but rather his original detail should have stated assignment as a Cost Analyst. However, as will be seen below, this impropriety by HUD personnel officials does not affect Mr. Fenton's rights in this instance.

In our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 Comp. Gen., 427 (1977), we held that an employee who was detailed to a higher position had to satisfy the requirements for a temporary promotion before the remedial action authorized by those decisions - retroactive temporary promotion with backpay - could be granted. The Civil Service Commission (CSC) promulgated implementing instruction for these decisions in CSC Bulletin 300-40 dated May 25, 1977. It is noted that claims for retroactive promotion under those decisions are not subject to the competitive selection rules prescribed by the CSC. This is so because of the limited applicability of the decisions and the difficulty of applying retroactivity to improper detail cases. See CSC Bulletin No. 300-40, paragraph 8D. Therefore, to the extent that the Acting Director of Personnel construed our Turner-Caldwell decisions as requiring an adherence to merit staffing policies as a condition precedent to implementing the decisions' remedies, he is in error. However, in paragraph 8C of the Bulletin, the CSC emphasized that an employee has to satisfy both statutory requirements and the CSC's regulatory requirements in order to be promoted, and it listed examples of requirements that are applicable, including the minimum CSC qualification standards for competitive positions as set forth in CSC Handbook X-118 and X-118C.

The record contains conflicting evidence as to whether Mr. Fenton was detailed to a GS-11 position. A Request for Personnel Action dated March 12, 1972, shows Mr. Fenton's assignment from GS-9, Appraiser, to unclassified duties without specifying any grade. However, Mr. Fenton's supervisor stated in a recommendation for promotion dated September 10, 1973, that he had been performing the duties of Construction Analyst, GS-11, since March 1972. Also, even if Mr. Fenton could be considered to have been detailed to a GS-11 position commencing March 12, 1972, such detail was terminated on July 8, 1973, since Standard Form 50 dated July 28, 1973,

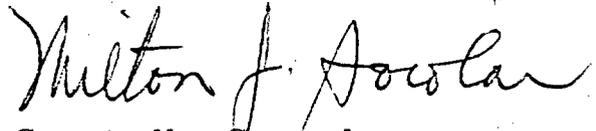
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shows that he was reassigned from GS-9, Appraiser, to GS-9, Construction Analyst, effective July 8, 1973.

If Mr. Fenton was not detailed, he is subject to the general rule that an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. Unless and until his position is reclassified to a higher grade and he is promoted to that position, he is not entitled to the higher salary. William L. Rivera, B-173783.140, March 22, 1977; and James H. Marshburn, B-180144, October 20, 1976.

If Mr. Fenton were considered to be detailed to the GS-11 position for the period March 12, 1972, to July 8, 1973, it would be necessary to show that he was eligible for promotion to that grade in order for him to receive backpay. Turner-Caldwell, supra, and CSC Bulletin No. 300-40, paragraph 8D, supra. It is administratively reported that he did not meet the CSC's minimum qualification standards for the position Construction Analyst, GS-0828-11. In this connection the report states that the qualification requirements for GS-11 in the 828 series are 3 years general experience and 3 years specialized experience and that Mr. Fenton's real estate sales and appraiser experience are not acceptable as general or specialized experience under the 828 series. Therefore, Mr. Fenton is not entitled to a retroactive temporary promotion and backpay.

Accordingly, we sustain the determination of our Claims Division denying Mr. Fenton's claim for backpay.



For the Comptroller General
of the United States